

Gary S. Fish, Esq. (GSF 6551)  
Attorney for the Plaintiff  
15 Maiden Lane, Suite 1108  
New York, New York 10038

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X CASE #: 07 CV 08695 (HB)  
AHMED BASSETT,

PLAINTIFF,

-against-

THE CITY OF NEW YORK,

DEFENDANT.

DECLARATION OF GARY S.  
FISH, ESQ., IN SUPPORT OF  
MOTION TO AMEND  
COMPLAINT TO ADD  
PARTY DEFENDANTS

-----X  
I, Gary S. Fish, Esq., an attorney duly licensed to practice law before the United States District Court for the Southern District of New York, hereby declare under penalties of perjury as follows:

1. I am the attorney for plaintiff, and I am not a party to this action. I have personal knowledge of the below stated, based on my review of the investigative file maintained in this action. As to those statements based on case or statutory law, or legal argument, I do not have personal knowledge but the Court can take judicial notice thereof. I am submitting this declaration in support of plaintiff motion to amend summons and complaint in the interest of justice, pursuant to Federal Rule of Civil Procedure Section 15(a)(2) (FRCP Section 15(a)(2) to add as party defendants Police Officer Kenneth Baker and Sergeant Stremel, with respect to each and every component of plaintiff's Section 1983 claim, to wit: (a) false arrest; (b) false imprisonment; and © malicious prosecution.

2. At the bare minimum, agreed to by Assistant Corporation Counsel Brooke Birnbaum, Esq., in the attached March 31, 2008 letter to Judge Baer, Jr., page 4, the Court should allow the plaintiff to amend the summons and complaint to allege a claim sounding in malicious prosecution against foreseeable defendants Police Officer Kenneth Baker and/or Sergeant Stremel.

3. For the reasons herein after set forth, due to the continuing violation doctrine, the Court should also allow the plaintiff to amend the summons and complaint to allege claims sounding in false arrest and false imprisonment against foreseeable defendants Police Officer Kenneth Baker and/or Sergeant Stremel.

4. Plaintiff did in fact allege a continuing wrong in Paragraph 10 of the initial complaint. That paragraph expressly states (emphasis provided) **THE FALSE ARREST AND/OR FALSE IMPRISONMENT AND/OR MALICIOUS PROSECUTION OF THE PLAINTIFF... WAS WRONGFUL, INTENTIONAL, AND WITHOUT JUSTIFICATION AND/OR WITHOUT PROBABLE CAUSE, WAS PART OF A SUBSTANTIAL AND CONTINUOUS PATTERN OF WRONGDOING AND STEREOTYPICAL RACIAL AND/OR ETHNIC PROFILING BY THE DEFENDANT....** In Paragraph 6 of the Complaint, plaintiff alleged that **THE DEFENDANT AND/OR ITS AGENTS, SERVANTS AND/OR EMPLOYEES WRONGFULLY INTENTIONALLY AND FALSELY ACCUSED THE PLAINTIFF OF KNOWINGLY RECEIVING STOLEN MERCHANDISE AND WITHOUT WARRANT AND PROBABLE CAUSE, ARRESTED AND PLAINTIFF AND CHARGED HIM WITH A FELONY** (My emphasis provided). Thus, the defendant was on actual notice at the time that the complaint was filed on October 9, 2007, well within the Statute of Limitations period for

the false arrest and false imprisonment component of plaintiff's Section 1983 claim that agents, servants and/or employees of the defendant The City of New York (i.e. police officers are such agents servants and/or employees) were also foreseeably liable for a Section 1983 violation. Plaintiff has alleged that defendants violated his constitutional rights within the timely filing period, and has therefore properly asserted a continuous violation. See *Pino v. Ryan*, 49 F.3d 51, 54 (2<sup>nd</sup> Cir. 1995). No prejudice exists to allow the amendment set forth herein.

5. I first learned of the existence of Sergeant Stremel and his involvement in the alleged false arrest and false imprisonment and malicious prosecution of plaintiff under Section 1983, on March 20, 2008, when Assistant Corporation Counsel Brooke Birnbaum, Esq., attorneys for defendant The City of New York made this Rule 26 disclosure to me immediately prior to the Pretrial Conference before Judge Baer, Jr. This disclosure was approximately forty five (45) days after the alleged statute of limitations allegedly ran on the false arrest and false imprisonment component of plaintiff's Section 1983 claim against this foreseeable defendant.

6. Plaintiff could not have named Sergeant Stremel as a party defendant prior to February 5, 2008 (The 3 year Statute of Limitations) because he was unaware of the existence of said individual. However, defendant, who on March 20, 2008 did in fact list Sergeant Stremel on the Rule 26 disclosure form, clearly had actual notice of this individual's involvement prior to any foreseeable Statute of Limitations expiring on the false arrest and false imprisonment component of the Section 1983 claim. No prejudice exists therefore with respect to this amendment. In addition, no prejudice would exist with respect to the amendment because police records would exist that would foreseeably chronicle any alleged involvement of Sergeant Stremel's (and Police Officer Kenneth Baker) in plaintiff's alleged false arrest and false imprisonment, which records

could also be used in Sergeant Stremel's (and Police Officer Kenneth Baker's) defense of the underlying Section 1983 claim. The Court should allow this amendment in the interest of justice therefore under Rule 15(a)(2) of the FRCP.

7. In making this motion, plaintiff stipulates to the defense contention raised in Assistant Corporation Counsel Brooke Birnbaum, Esq.'s March 31, 2008 letter to Judge Baer, Jr., contending that this is not a "relation back" case. However, it is also well settled, of which the Court can take judicial notice, that the Court has the inherent power to extend the time by which an act must be done, in the interests of substantial justice (and also pursuant to Rule 15(a)(b) of the FRCP.). In this case, the lawsuit herein that was filed, was filed in a timely manner and served on defendant The City of New York in a timely manner. Plaintiff could not have timely filed and served an amended pleading on foreseeable defendant Sergeant Stremel prior to February 5, 2008, because plaintiff did not know the identity of this individual until 45 days (3-20-08) AFTER the alleged Statute of Limitations expired on the false arrest and false imprisonment component of plaintiff's Section 1983 claim. Nor was defendant under any pre-existing discovery obligations prior to February 5, 2008 to divulge to plaintiff's counsel the names of either Police Officer Kenneth Baker or Sergeant Stremel.

8. Plaintiff also did not know Police Officer Kenneth Baker's involvement with respect to any false arrest or false imprisonment of the plaintiff prior to the March 20, 2008 disclosure. Defense counsel will foreseeable argue that because Kenneth Baker was listed as a deponent on the subject February 2005 criminal complaint against Bassett, plaintiff waived his right to name this defendant as a party defendant with respect to the proposed amended complaint sounding in false arrest and false imprisonment against Police Office Kenneth Baker. It is

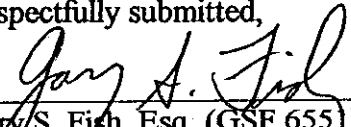
respectfully submitted that this argument is misplaced. On the criminal complaint, Police Officer Kenneth Baker made a hearsay deposition based on information furnished him by an unknown undercover informant. This vague declaration does not constitute evidence of Police Officer Baker's arrest or imprisonment of the plaintiff, which involvement was not known until the March 20, 2008 disclosure. Again, in the interest of justice, the Court should allow plaintiff to amend the Section 1983 complaint to allege false arrest and false imprisonment against Police Officer Kenneth Baker, as well.

9. Plaintiff has acted promptly and in good faith with respect to the proposed amended complaint against foreseeable defendants Police Officer Kenneth Baker and Sergeant Stremel. In addition, the Court can take judicial notice that in the interest of good faith and substantial justice, plaintiff had previously in this case stipulated to defense counsel's letter request to the Court for a 60 day extension of time, for defendant to file an answer in the present case. The Pretrial Conference was scheduled AFTER the alleged running of the 3 year Statute of Limitations, precisely because defense counsel requested the 60 days extension.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the Court grant plaintiff's motion to amend, allow plaintiff to file an Amended Complaint listing party defendants Kenneth Baker and Sergeant Stremel within twenty (20) days of the granting of the motion, together with any other relief deemed proper by the Court.

DATED: NEW YORK, NEW YORK  
APRIL 29, 2008

Respectfully submitted,

  
\_\_\_\_\_  
Gary S. Fish, Esq. (GSF 6551)  
Attorney for the Plaintiff  
15 Maiden Lane, Suite 1108  
NY, NY 10038; (212) 964-5100

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
AHMED A. BASSETT,

Plaintiffs,

-against-

THE CITY OF NEW YORK

Defendant.  
----- x

DEFENDANT'S  
DISCLOSURES  
PURSUANT TO FED R.  
CIV. P. 26(A)

07-cv-08695 (HB) (MHD)

PLEASE TAKE NOTICE, that defendant City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, pursuant to Rule 26(a) of the Federal Rules of Civil Procedure, hereby submit for its initial disclosures that:

a. Individuals presently known to defendant who may have knowledge or information relevant to the events alleged in the complaint are:

Plaintiff

Another individual arrested at the same time as plaintiff<sup>1</sup>

Police Officer Kenneth Baker, Shield 29152, Mid-Town South Detective Squad, 357 West 35<sup>th</sup> St, New York, NY 10001

Individuals identified in the attached documents

<sup>1</sup> Another individual was arrested with plaintiff. This person's name and other identifying information has been redacted for privacy reasons and in accordance with N.Y.C.P.L. §160.50. Defendant will produce the name of this person to plaintiff subject to an appropriate Stipulation and Confidentiality order.

b. The relevant documents are as identified below and are attached hereto:

New York City Police Department Arrest Report, Bearing Bates No. 1  
New York City Police Department BADS/OLPA Printout Bearing Bates  
No. 2  
New York County District Attorney's File,<sup>2</sup> bearing Bates Nos. 3-18  
New York County Criminal Court Certificate of Disposition, bearing  
Bates No. 19  
New York County Criminal Court File, bearing Bates Nos. 20-22

c. Computation of damages: Not applicable.

d. Any insurance agreements: Not applicable.

Dated: New York, New York  
March 20, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendant  
100 Church Street, Room 3-142  
New York, New York 10007  
(212) 676-1347

By: Brooke Birnbaum  
Brooke Birnbaum  
Assistant Corporation Counsel

TO: Mr. Gary Fish, Esq. (By Hand)

<sup>2</sup> The redactions made within the New York County District Attorney's File were made by the New York County District Attorney's Office.



## RECORD STATUS: REF: 000000

ARRESTED: 000000

Arrest Location: INSIDE OF 177 WEST END AVE

POLICE

Arrest Date: 02-03-2005 Processing Type: ON LINE

Time: 20:00:00 DCJS Fax Number: M05607787

Sector: G Special Event Code: -

DAT: NO

Stop And Frisk: NO Return Date:

Serial #: 0000-000-00000

## COMPLAINTS:

Arrest #: M05609843

COMPLAINT NUMBER REPORT DATE RECORD STATUS OCCUR DATE OCCUR TIME

2005-024-00722 2005-02-03 Received # for Arrest 2005-02-03 14:30

## CHARGES:

Arrest #: M05609843

CHARGE ATTEMPT? LAW CODE CLASS TYPE COUNTS DESCRIPTION

TOP No PL 165.45 81 F E 2 CPSP-4TH:PROPERTY VAL &gt;\$1000

DWT Arrest from:

# Injured: 00

# Fatalities: 00

Test Given:

B.A.C.:

Reason Not Forfeited:

## DETAILS:

Arrest #: M05609843

ON NUMEROUS OCCASSIONS DEFT DID PURCHASE STOLEN LAPTOP COMPUTERS FROM AN APPREHENDED INDIVIDUAL. PERP DID ALSO INSTRUCT PERP #1 TO PURCHASE 2 STOLEN LAPTOP COMPUTERS FROM SAME APPREHENDED INDIVIDUAL DURING A FENCING LOCATION OPERATIO N AT 737 WEST END AVE.

## DEFENDANT: BASSET, AHMED A

NYSID #:

Arrest #: M05609843

Nick/AKA/Maiden:

Sex: MALE

Race: OTHER

Age: 23

Date Of Birth: 06/14/1981

U.S. Citizen: NO

Place Of Birth: EGYPT

Need Interpreter: NO

Language:

Accent: NO

Height: 5FT 07IN

Weight: 170

Eye Color: BROWN

Hair Color: BLACK

Hair Length: NORMAL

Hair Style: STRAIGHT

Skin Tone: MEDIUM

Complexion: CLEAR

Soc Security #:

Occupation: OTHER

Physical Condition: APPARENTLY NORMAL Lic/Permit Type:

Drug Used: NONE

Lic/Permit No:

Order Of Protection: NO

Issuing Court:

Docket #:

Expiration Date:

Relation to Victim: STRANGER

Living together: NO

Can be Identified: YES

Gang Affiliation: NO

Name:

Identifiers:

LOCATION ADDRESS CITY STATE/CNTRY ZIP APT/ROOM PCT

HOME-PERMANENT 301 WEST 86 STREET MANHATTAN NEW YORK 10028 4W 024

Phone # and E-Mail Address:

N.Y.C.H.A. Resident: NO N.Y.C. Housing Employee: NO On Duty:

Development: N.Y.C. Transit Employee: NO

Physical Force: NONE

Gun:

Weapon: NONE

Make:

Other:

Color:

Caliber:

Type:

Discharged: NO

Used Transit System:

Station Entered:

Time Entered:

Metro Card Type:

Metro Card Used/Poses:

Card #:

## CRIME DATA

## DETAILS

MODUS OPERANDI

PURCHASED STOLEN PROPERTY

ACTIONS TOWARD VICTIM UNK

CLOTHING

OUTERWEAR - SWEAT SHIRT OR JOGGING JACKET - UNKNOWN COLOR

CLOTHING

ACCESSORIES - BLUE

CLOTHING

FOOTWEAR - SNEAKERS - GREEN

CLOTHING

HEADGEAR - UNK - UNKNOWN COLOR

CHARACTERISTICS

EYEGLASSES

BODY MARKS



UNKNOWN

BODY MARKS

UNKNOWN

NYC



Arrest #: M05609843			
Arrest #: M05609843			
INVOICES:			
INVOICE# COMMAND PROPERTY TYPE VALUE			
ARRESTING OFFICER: POM KENNETH F BAKER			
Arrest #: M05609843			
Force Used: NO			
Type:			
Reason:			
Officer Injured: NO			
Tax Number: [REDACTED]	On Duty: YES		
Other ID (non-NYPD): [REDACTED]	In Uniform: NO		
Shield: 5786	Squad: B		
Department: NYPD	Chart: 97		
Command: M PCT S Primary Assignment			
Arresting Officer Name: POM BAKER, KENNETH	Tax #: [REDACTED]	Command: M PCT S	Agency: NYPD
Supervisor Approving: SGT STREMEL	Tax #: [REDACTED]	Command: 014	Agency: NYPD
Report Entered by: SGT STREMEL	Tax #: [REDACTED]	Command: 014	Agency: NYPD
		<b>END OF ARREST REPORT</b> <b>M05609843</b>	
			



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Defendants.

Police Officer Kenneth Baker, shield 05785 of the 014 Precinct-Midtown South Precinct, states as follows:

On February 3, 2005, at about 14:30 hours at 737 WEST END AVE in the County and State of New York, the Defendants committed the offenses of:

1. PL165.45(1) Criminal Possession of Stolen Property in the Fourth Degree  
(defendant #1: 2 counts)  
(defendant #2: 2 counts)

the defendants knowingly possessed stolen property valued over 1,000 dollars with intent to benefit a person other than an owner of the property and to impede recovery by an owner thereof.

The offenses were committed under the following circumstances:

Deponent states that he is informed by an informant, a person whose name and address are known to the District Attorney's Office that the defendants, acting together did purchase stolen laptops computers, in that, on February 3, 2005 at 737 West End Ave at about 2:30pm the informant approached defendant [REDACTED] with two stolen laptop computers and informant asked defendant [REDACTED] to go get defendant Basset to purchase the computers. Defendant [REDACTED] told the informant that he would take care of him and asked the informant, in substance, "Show me what you got?" and then defendant [REDACTED] gave informant \$150 for two laptop computers. Deponent further states that defendant [REDACTED] admitted that he bought the two stolen laptops from the informant and that he was working for and under the direction of defendant Basset. Deponent states that he recovered the two laptop computers from behind the counter where defendant [REDACTED] was standing, inside the above-mentioned location and that location is the store where defendant Basset works as well.

Deponent also states that defendant Basset also admitted that he previously bought at least two laptop computers from a person he knows who sells him stolen computers at the above-mentioned location.

False statements made herein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law.

[Signature]  
Deponent

2-4-05 1925 h  
Date and Time

ACT 5 Version 4.2.0 Created on 02/04/05 6:53 PM

TOTAL P. 21



MICHAEL A. CARDOZO  
Corporation Counsel

THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007

BROOKE BIRNBAUM  
Assistant Corporation Counsel  
(212) 676-1347  
(212) 788-9776 (fax)

March 31, 2008

**BY HAND**

Honorable Harold Baer  
United States District Judge  
United States Courthouse, Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Ahmed Bassett v. City of New York 07-cv-08695 (HB)

Your Honor:

I am the Assistant Corporation Counsel assigned to the defense of the above-referenced civil rights action. For the reasons stated herein, defendant City of New York (1) respectfully requests that the Court deny plaintiff's request to amend the complaint to bring a claim for false arrest against Police Officer Kenneth Baker and/or Sergeant Stremel and (2) does not oppose plaintiff's request to amend the complaint to bring a claim for malicious prosecution against Police Officer Kenneth Baker and/or Sergeant Stremel in this matter.

A. Any Claim for False Arrest brought against Police Officer Kenneth Baker and/or Sergeant Stremel is Barred by the Statute of Limitations and Would Not "Relate Back" to the Original Complaint.

Any claim for false arrest against Police Officer Kenneth Baker and Sergeant Stremel is time-barred. It is well established that the statute of limitations for claims brought in New York under 42 U.S.C. § 1983 is three years. Owens v. Okure, 488 U.S. 235 (1989); Pearl v. City of Long Beach, 296 F.3d 76 (2d Cir. 2002). While plaintiff asserts that the statute of limitations on his false arrest claim did not accrue until the criminal charges brought against him were dismissed on May 18, 2005, he fails to cite any legal authority for this proposition. (See Plaintiff's Letter, dated March 24, 2008). In fact, the Supreme Court has recently held that the statute of limitations on a false arrest claim, "where the arrest is followed by criminal proceedings, begins to run at the time the claimant becomes detained pursuant to legal process." Wallace v. Kato, 127 S. Ct. 1091, 1100, 2007 U.S. LEXIS 2650, at \*23 (February 21, 2007). This is because a claim for "false imprisonment consists of detention without legal process, [and] a false imprisonment ends once the victim becomes held pursuant to such process -- when, for example, he is bound over by a magistrate or arraigned on charges." Wallace, 127 S. Ct. at 1096 (internal citations omitted). In the instant action, plaintiff was arraigned on February 5, 2005, and thus, the statute of limitations on this claim expired on February 5, 2008.

As the Court is aware, a party may amend a complaint after the statute of limitations expires to add additional defendants only if the amendment would "relate back" to the date that the original complaint was filed. Shell v. Brzezniak, 365 F. Supp. 2d 362, 367 (W.D.N.Y. 2005); see also Young-Flynn v. Kelly, 234 F.R.D. 70, 73-74 (S.D.N.Y. March 15, 2006). An amendment "relates back" to the date of the original pleading when the amendment changes the party or the naming of the party against whom a claim is asserted if, within the time period provided by Rule 4(m) for service of summons, the party to be brought in by amendment (1) has received such notice of the institution of the action that a party will not be prejudiced, and (2) "knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party." Fed. R. Civ. P. 15(c); See also Ortiz v. City of New York, 04 Civ. 1285 (JSR)(RLE), 2005 U.S. Dist. LEXIS 15807 at \*6 (S.D.N.Y. 2005). Thus, plaintiff must demonstrate that any new defendants received notice of the amendment within 120 days of the filing of the original complaint. Fed. R. Civ. P. 15(c); Barrow v. Wethersfield Police Dept., 66 F.3d 466, 469 (2d Cir. 1995), amended (1995) (2d Cir. 1995). Inability to demonstrate notice is fatal to an attempt to have claims relate back to the filing of the original complaint. Ortiz, 2005 U.S. Dist. LEXIS 15807 at \*7-\*8; Ortiz v. City of New York, 700 F. Supp. 202, 205 (S.D.N.Y. 1988).

Moreover, the Second Circuit has held that "an amended complaint adding new defendants [cannot] relate back if the newly-added defendants were not named originally because the plaintiff did not know their identities." Tapia-Ortiz v. Doe, 171 F.3d 150, 152 (2d Cir. 1999) (quoting Barrow, 66 F.3d at 470). This is because "such amendments do not satisfy Rule 15(c)'s requirement that the omission of the newly-added party be the result of 'a mistake concerning the identity of the proper party,' because they 'seek to correct a lack of knowledge rather than a mistake of fact or law.'" Sidney v. Wilson, 228 F.R.D. 517, 520 (S.D.N.Y. June 24, 2005) (quoting Fed. R. Civ. P. 15(c) and Vineyard v. County of Nassau, 329 F. Supp. 2d 364, 369 (E.D.N.Y. 1994)); see also Young-Flynn, 234 F.R.D. at 74. In Sidney, the court went on to explain that "Second Circuit doctrine as well as the Advisory Committee Notes, counsel against interpreting ignorance of a party's name as a 'mistake' under Rule 15(c)." 228 F.R.D. at 520.

Plaintiff does not argue that Police Officer Kenneth Baker and/or Sergeant Stremel had any notice nonetheless "actual notice" of this action within 120 days of the filing of the original complaint, but instead argues in his March 24, 2008 letter to the Court that the City:

"was on actual notice at the time of the filing of subject lawsuit on October 9, 2007 that foreseeable defendants included agents, servants and/or employees of defendant The City of New York, which would foreseeably include within its ambit New York City police officers whose names were disclosed to me on March 20, 2008. No prejudice exists therefore in allowing the proposed party defendants amendments."

In order to impute knowledge of a lawsuit to a new defendant represented by the same attorney as other defendants in the case, plaintiff must show that the attorneys "knew or should have known" that the new defendant would be named. See Gleason v. McBride, 869 F.2d 688, 693 (2d Cir. 1989). In the present case, defense counsel had no reason to know, within 120 days of the filing of the original complaint, that plaintiff would attempt to add Police Officer Kenneth Baker and Sergeant Stremel as parties to this matter. As an initial matter, "[p]laintiff named no



John Doe defendants in his original Complaint to place unnamed parties on notice of his claims." Sedney v. Winter, 98 Civ. 9006 (RMB), 2002 U.S. Dist. LEXIS 23308, at \*10 (S.D.N.Y. October 21, 2002). In addition, there was no mention of a Police Officer Kenneth Baker or a Sergeant Stremel, in the body of the complaint. (See Plaintiff's Complaint).

Even assuming, *arguendo*, that plaintiff could meet the notice requirement, plaintiff cannot show that his failure to name Police Officer Kenneth Baker and Sergeant Stremel in the original complaint was a mistake. As noted above, the Second Circuit has held that a lack of knowledge does not amount to a "mistake" under Rule 15(c). See Barrow, 66 F.3d at 470 ("the failure to identify individual defendants when the plaintiff knows that such defendants must be named cannot be characterized as a mistake. . . . Since the new names were added not to correct a mistake but to correct a lack of knowledge, the requirements of Rule 15(c) for relation back are not met."). In this latter, plaintiff fails to articulate any reason whatsoever as to why he failed to name Police Officer Kenneth Baker and Sergeant Stremel as defendants in this matter. Thus, plaintiff's failure to name Baker and Stremel as articulated by the Second Circuit's interpretation of Fed. R. Civ. P. 15(c) is not a mistake. See Barrow v. City of New York, 98 Civ. 8800 (HB), 1999 U.S. Dist. LEXIS 11895 (2d Cir. May 18, 2000) (S.D.N.Y. August 5, 1999), *aff'd* 2000 U.S. App. LEXIS 11895 (2d Cir. May 18, 2000). Plaintiff's failure to name Baker and Stremel as defendants for relation back purposes where plaintiff could have learned identities of Baker and Stremel by reviewing a copy of CCRB investigation or obtaining police reports "in conjunction with the discovery that was available to the plaintiff during his criminal proceedings" prior to the filing of the original complaint); Barrow, 66 F.3d at 470; Godlewska v. HDA, Human Dev. Ass'n, Inc., CV-03-3985 (DGT) (JMA), 2006 U.S. Dist. LEXIS 30519 at \*6-\*10 (E.D.N.Y. May 18, 2006) (proposed amendment to add additional individual defendants does not relate back to the original complaint since lack of knowledge does not amount to a mistake); Sidney, 228 F.R.D. at 519-520 (same); Green v. New York City Dept. of Correction, 93 Civ. 3360 (SAS), 1997 U.S. Dist. LEXIS 2293, at \*13-\*15 (S.D.N.Y. March 3, 1997) (same); Vineyard, 329 F. Supp. 2d at 369. Thus, there was no "mistake," other than a lack of knowledge, that plaintiff is seeking to correct through this amendment.

Moreover, while plaintiff maintains that Police Officer Kenneth Baker and Sergeant Stremel will not be prejudiced by this amendment, defendant disagrees. The alleged incident occurred on or about February 3, 2005, which is over three years ago. Plaintiff has failed to articulate any reason whatsoever as to why he waited so long to file this law suit. Moreover, plaintiff's delay potentially causes problems with Police Officer Kenneth Baker and Sergeant Stremel's memory and recollection of the incident.

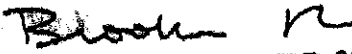
Therefore, any amendment of plaintiff's complaint to add a false arrest claim against Police Officer Kenneth Baker and Sergeant Stremel would be futile, since the statute of limitations has expired, and any amendment would not relate back to the original complaint. Accordingly, defendant respectfully requests that the Court deny plaintiff's request to amend the complaint to add a claim for false arrest against Police Officer Kenneth Baker and Sergeant Stremel in this matter.

B. A Claim for Malicious Prosecution brought against Police Officer Kenneth Baker and/or Sergeant Stremel is Not Barred by the Statute of Limitations.

Defendant respectfully informs the Court that the statute of limitations on plaintiff's malicious prosecution claim has not expired and therefore, defendant does not oppose this request.

I thank Your Honor for considering the within requests.

Respectfully submitted,

  
Brooke Birnbaum (BB 8338)  
Assistant Corporation Counsel

City of New York  
New York City, NY (By Fax)

**JUDGE BAER** United States District Court  
SOUTHERN DISTRICT OF NEW YORK

AHMED A. BASSETT

SUMMONS IN A CIVIL CASE

v.  
THE CITY OF NEW YORK

CASE NUMBER **07 CIV 8695**

TO: (Name and address of defendant)

The City of New York, 530 Municipal Building, NY, NY 1000,

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Gary A. Fish  
Gary S. Fish Esq  
151 Maiden Lane #1108  
NY, NY 10038; (212) 964-5100

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

**J. MICHAEL McMAHON**  
CLERK

DATE

OCT 09 2007

(BY) DEPUTY CLERK

*[Signature]*



**GE BAER**

**07 CIV 8695**

Gary S. Fish, Esq. (GSF 6551)  
Attorney for the Plaintiff  
15 Maiden Lane, Suite 1108  
New York, New York 10038  
(212) 964-5100



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_X CASE NO.:

AHMED A. BASSETT,

PLAINTIFF'S COMPLAINT

PLAINTIFF,

(Plaintiff Demands a Trial By Jury  
Of All Issues Herein)

-against-

THE CITY OF NEW YORK,

DEFENDANT.

\_\_\_\_\_X

The plaintiff, by and through his attorney Gary S. Fish, Esq., complains of  
defendant as follows:

**I. PARTIES AND JURISDICTION**

1. On or about February 3, 2005, and at all times relevant herein, the plaintiff resided and resides at 301 West 96<sup>th</sup> Street, New York, New York 10025.
2. On or about February 3, 2005, and at all times relevant herein, on information and belief, the defendant The City of New York was and is on information and belief, a municipal corporation lawfully organized and existing under the laws of the State of New York, and on said date and at all times relevant herein, said defendant had and has its principal place of business located at 530 Municipal Building, New York, New York 10007.
3. Pursuant to 28 U.S.C. Section 1343(a)(3), the Federal Court herein has original jurisdiction to redress the deprivation of civil rights under color of any State law, statute, ordinance of any

right, privilege, or immunity secured by the U.S. Constitution, providing for equal rights of citizens or of all persons within U.S. jurisdiction, and jurisdiction exists herein.

4. Pursuant to 28 U.S.C. Section 1391(b) in a case where jurisdiction is not solely founded on diversity jurisdiction, such as the present case, venue is proper where the defendant resides or a judicial district where a substantial part of the events giving rise to the claim occurred, and venue is proper therefor in the United States District Court, Southern District of New York.

COUNT I  
(VIOLATION OF 42 U.S.C. SECTION 1983)

5. On or about February 3, 2005, plaintiff, an Egyptian-American, was working as an independent contractor at a family business known as West End Deli, 96<sup>th</sup> and West End Avenue, New York, New York 10025

6. On or about February 3, 2005, the defendant and/or its agents, servants and/or employees  
wrongly, intentionally, and falsely accused the plaintiff of knowingly receiving stolen

merchandise, to wit, computers and components, and, without warrant and probable cause,  
arrested the plaintiff, and charged him with a felony, Penal Law Section 165.45, People of the State of New York v. Ahmed A. Basset, Docket #: 2005NY008717.

7. Plaintiff was intentionally, wrongfully and without probable cause, falsely confined as a result of the subject false arrest.

8. On or about May 18, 2005, per Certificate of Disposition #: 43046 attached hereto, The Court, per Judge Martin Murphy in People of the State of New York v. Ahmed A. Basset, dismissed the case against the plaintiff. This dismissal was at the request of the Assistant District Attorney, on the ground that The People, at this pre-trial stage, admitted it could not prove its

case against plaintiff (defendant therein) beyond a reasonable doubt.

9. Plaintiff was prosecuted maliciously, intentionally and without probable cause.

10. The false arrest, and/or false imprisonment and/or malicious prosecution of the plaintiff,

an Egyptian- American Male, was wrongful, intentional, without justification and/or without

probable cause, was part of a substantial and continuous pattern of wrongdoing and

stereotypical racial and/or ethnic profiling and discrimination by the defendant against

Egyptian-Americans, and plaintiff was thereby denied equal rights, protection, privileges and

immunities protected under law pursuant to 42 U.S.C. Section 1983.

11. The violation of plaintiff's rights secured under 42 U.S.C. Section 1983, was

malicious, oppressive, egregious and opprobrious, was calculated to and did result in the loss of

his liberty and property rights, and defendant is liable for punitive and exemplary damages as

a result thereof.

12. As a direct result of defendant's violations of plaintiff's rights, privileges and

immunities secured under 42 U.S.C. Section 1983, the plaintiff was caused to incur and will

incur reasonable attorney fees and costs.

WHEREFORE, plaintiff prays for relief as follows:

1. For damages in the amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00);

2. For punitive and exemplary damages in the amount of One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00);

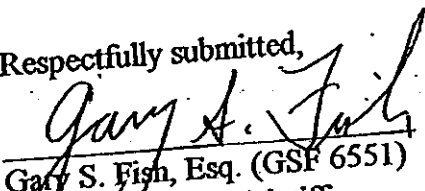
3. For reasonable attorney fees and costs;

4. For disbursements; and

5. For any other just relief deemed proper by the Court.

DATED: NEW YORK, NEW YORK  
OCTOBER 9, 2007

Respectfully submitted,

  
Gary S. Fish, Esq. (GSF 6551)  
Attorney for the Plaintiff  
15 Maiden Lane, Suite 1108  
NY, NY 10038; (212) 964-5100

L COURT OF THE CITY OF NEW YORK  
OF NEW YORK

CERTIFICATE OF DISPOSITION  
NUMBER: 43046

PEOPLE OF THE STATE OF NEW YORK  
VS

ASSET, AHMED A  
Defendant

05/14/1981  
Date of Birth

301 WEST 96 STREET  
Address

6129097R  
NYSID Number

MANHATTAN NY  
City State Zip

02/03/2005  
Date of Arrest/Issue

Docket Number: 2005NY008717

Summons No:

165.45  
Arraignment Charges

Case Disposition Information:

Date Court Action  
05/18/2005 DISMISSED AND SEALED

Judge  
MURPHY, MARTIN

Part  
F

**SEALED**

pursuant to Section 160.50 of the CPL

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN  
THIS COURT.

PRANCKEVIC, M  
COURT OFFICIAL SIGNATURE AND SEAL

08/03/2005  
DATE

FEE: 10.00

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT  
SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

Gary S. Fish, Esq. (GSF 6551)  
Attorney for the Plaintiff  
15 Maiden Lane, Suite 1108  
New York, New York 10038  
(212) 964-5100

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X CASE NO.: 07 CV 8695

AHMED A. BASSETT,

PLAINTIFF,

PLAINTIFF'S PROPOSED  
FIRST AMENDED COMPLAINT

-against-

(Plaintiff Demands a Trial By Jury  
Of All Issues Herein)

THE CITY OF NEW YORK, KENNETH BAKER,  
and SERGEANT STREMEL,

DEFENDANT.

-----X

The plaintiff, by and through his attorney Gary S. Fish, Esq., sets forth the following  
as his proposed First Amended Complaint.

#### I. PARTIES AND JURISDICTION

1. On or about February 3, 2005, and at all times relevant herein, the plaintiff resided and resides at 301 West 96<sup>th</sup> Street, New York, New York 10025.
2. On or about February 3, 2005, and at all times relevant herein, on information and belief, the defendant The City of New York was and is on information and belief, a municipal corporation lawfully organized and existing under the laws of the State of New York, and on said date and at all times relevant herein, said defendant had and has its principal place of business located at 530 Municipal Building, New York, New York 10007.
3. On or about February 3, 2005, and at all times relevant herein, defendant Kenneth Baker

on information and belief was and is a police officer, shield #29152, assigned to Mid-Town South Detective Squad, 357 West 35<sup>th</sup> Street, NY, NY 10001, and each act of wrongdoing hereinafter alleged to have been committed by this defendant was within the scope of his agency and/or authority and/or employment by defendant The City of New York.

4. On or about February 5, 2005, and at all times relevant herein, on information and belief, defendant Sergeant Stremel was and is defendant Baker's supervising officer assigned to Mid-Town South Detective Squad, and each act of wrongdoing hereinafter alleged to have been committed by this defendant was within the scope of his agency and/or authority and/or employment by defendant The City of New York.

5. Pursuant to 28 U.S.C. Section 1343(a)(3), the Federal Court herein has original jurisdiction to redress the deprivation of civil rights under color of any State law, statute, ordinance of any right, privilege, or immunity secured by the U.S. Constitution, providing for equal rights of citizens or of all persons within U.S. jurisdiction, and jurisdiction exists herein.

6. Pursuant to 28 U.S.C. Section 1391(b) in a case where jurisdiction is not solely founded on diversity jurisdiction, such as the present case, venue is proper where the defendant resides or a judicial district where a substantial part of the events giving rise to the claim occurred, and venue is proper therefor in the United States District Court, Southern District of New York.

COUNT I  
(VIOLATION OF 42 U.S.C. SECTION 1983)

7. On or about February 3, 2005, plaintiff, an Egyptian-American, was working as an independent contractor at a family business known as West End Deli, 96<sup>th</sup> and West End Avenue, New York, New York 10025



8. On or about February 3, 2005, the defendants and each of them, wrongly, intentionally, and falsely accused the plaintiff of knowingly receiving stolen merchandise, to wit, computers and components, and, without warrant and probable cause, arrested the plaintiff, and charged him with a felony, Penal Law Section 165.45, People of the State of New York v. Ahmed A. Basset, Docket #: 2005NY008717.

9. Plaintiff was intentionally, wrongfully and without probable cause, falsely confined as a result of the subject false arrest by defendants.

10. On or about May 18, 2005, per Certificate of Disposition #: 43046 attached hereto, The Court, per Judge Martin Murphy in People of the State of New York v. Ahmed A. Basset, dismissed the case against the plaintiff. This dismissal was at the request of the Assistant District Attorney, on the ground that The People, at this pre-trial stage, admitted it could not prove its case against plaintiff (defendant therein) beyond a reasonable doubt.

11. Plaintiff was prosecuted maliciously, intentionally and without probable cause.

12. The false arrest, and/or false imprisonment and/or malicious prosecution of the plaintiff, an Egyptian- American Male, by defendants, and each of them, was wrongful, intentional, without justification and/or without probable cause, was part of a substantial and continuous pattern of wrongdoing and stereotypical racial and/or ethnic profiling and discrimination by the defendants against Egyptian-Americans, and plaintiff was thereby denied equal rights, protection, privileges and immunities protected under law pursuant to 42 U.S.C. Section 1983, by the defendants.

13. The violation of plaintiff's rights secured under 42 U.S.C. Section 1983, was malicious, oppressive, egregious and opprobrious, was calculated to and did result in the loss of

his liberty and property rights, and defendant is liable for punitive and exemplary damages as a result thereof.

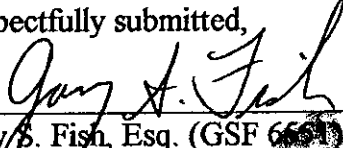
14. As a direct result of defendant's violations of plaintiff's rights, privileges and immunities secured under 42 U.S.C. Section 1983, the plaintiff was caused to incur and will incur reasonable attorney fees and costs.

WHEREFORE, plaintiff prays for relief as follows:

1. For damages in the amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00);
2. For punitive and exemplary damages in the amount of One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00);
3. For reasonable attorney fees and costs;
4. For disbursements; and
5. For any other just relief deemed proper by the Court.

DATED: NEW YORK, NEW YORK  
APRIL 28, 2008

Respectfully submitted,

  
\_\_\_\_\_  
Gary S. Fish, Esq. (GSF 6654)  
Attorney for the Plaintiff  
15 Maiden Lane, Suite 1108  
NY, NY 10038; (212) 964-5100

COURT OF THE CITY OF NEW YORK  
OF NEW YORK

CERTIFICATE OF DISPOSITION  
NUMBER: 43046

PEOPLE OF THE STATE OF NEW YORK  
VS

ASSET, AHMED A  
Defendant

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MANHATTAN NY  
City State Zip

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Date of Arrest/Issue

Docket Number: 2005NY008717

Summons No:

165.45  
Arraignment Charges

Case Disposition Information:

Date Court Action  
05/18/2005 DISMISSED AND SEALED

Judge  
MURPHY, MARTIN

Part  
F

**SEALED**

in pursuant to Section 160.50 of the CPL

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN  
THIS COURT.

PRANCKEVIC, M  
COURT OFFICIAL SIGNATURE AND SEAL

08/03/2005  
DATE

FEE: 10.00

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT  
SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

Plaintiff's failure to bring these claims against defendants during the applicable limitations period, therefore, is not based on a "mistake of identity," but is based on a lack of knowledge of defendants' identities. Thus, the claims do not relate back to the original pleading. See Barrow, 74 F.3d at 1367 ("the failure to identify individual defendants when the plaintiff knows that such defendants must be named can-

[6] Moreover, plaintiffs' motion to amend to add deliberate indifference claims is denied for the additional fact that plaintiff engaged in undue delay in his original complaint, plaintiff's only a fleeting reference to a "denial of medical attention."

5). As a result, upon initial review of *pro se* complaint pursuant to

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## SHELL v. BRZEZNIAK

369

Cite as 365 F.Supp.2d 362 (W.D.N.Y. 2005)

granted summary judgment in favor of defendants Brun, Brzezniak, Pirrami, and Cunningham based on collateral estoppel, in light of the prior Court of Claims action, and dismissed the claim with prejudice. (Dkt. # 44). Plaintiff cannot amend his complaint, therefore, to assert this claim again.<sup>4</sup>

IV. Fourth Claim—Failure-to-Protect

Plaintiff styles his proposed fourth amended claim as one for "breach of duty to protect" against defendants Kelly, McGray, Cunningham, O'Connell, Laskowski, Struebel, and Eagen. The allegations set forth in the fourth claim, however, are the same allegations plaintiff asserts in his first, second, and third claims against defendants. For the same reasons I denied plaintiff's motion to amend to add these claims, *supra*, I deny plaintiff's motion to amend to add the fourth claim.

V. Fifth and Ninth Claims—Inadequate Processing of Grievances

Plaintiff alleges that defendants Struebel, Eagen, Reams, and Stinson violated his First Amendment rights by failing to file and process various grievances and appeals in accordance with the Inmate Grievance Program at Attica and Great Meadow. These allegations fail to state a claim upon which relief can be granted.

[8-11] The First Amendment protects a prisoner's right to meaningful access to the courts and to petition the government for the redress of grievances. See

### III. Second Claim—Retaliatory Assault on March 24, 1997

[7] Plaintiff's proposed second amended claim alleges that defendants Brun, Brzezniak, Pirrami, and Cunningham (and now, according to plaintiff, defendant Gold-berg) violated his constitutional rights by assaulting him on March 24, 1997 in retaliation for his filing grievances against other correctional officers. By Decision and Order dated March 31, 2005, I previously

4. That plaintiff casts this claim as one for "retaliation" for filing grievances and not "excessive force" is of no consequence. There is an identity of issue between the Court of Claims action and this claim that was necessarily decided in defendants' favor. A judgment in favor of plaintiff on this claim would impair the finding of Judge NeMoyer that no unreasonable force was applied by defendants during the attack. See Dkt. # 44

and cases cited therein; see also *Collard v. Incorporated Village of Flower Hill*, 604 F.Supp. 1318, 1323 (E.D.N.Y.1984), *aff'd*, 759 F.2d 205 (2d Cir.1985). (the "[b]asis of establishing an identity of issues is: broader and more practical" than requiring "[a] showing that the issue in the prior action was framed in the same language or that the same theory of liability was charged as in the subsequent action.").

AFFIRMATION OF SERVICE

I, Gary S. Fish, Esq., an attorney duly licensed to practice law before the United States District Court, Southern District of New York, hereby affirm under penalties of perjury as follows:

1. I am the attorney for plaintiff, and I am not a party to this action.
2. That on April 29, 2008, I served by way of first class mail postage prepaid in a U.S. Postal depository, addressed to the last known address of the attorneys for defendant, Plaintiff Notice of Motion to Amend to name party defendants Baker and Stremel, Declaration of Gary S. Fish, Esq., in support of motion to amend, defendant's March 20, 2008 Disclosure Form, the Brooke Birnbaum, Esq., Assistant Corporation Counsel 3-31-08 letter to the Court, the attached summons and complaint, the proposed Amended Complaint, and all attachments, as follows:

Brooke Birnbaum, Esq., Assistant Corporation Counsel, Office of Corporation Counsel Michael Cardozo, Esq., Attorneys for Defendant The City of New York, 100 Church Street, NY, NY 10007

  
\_\_\_\_\_  
Gary S. Fish, Esq. (GSF 6551)